IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 88 of 1995.

Reserved on: 9.3.2007.

Date of decision: 21.3.2007.

State of H.P. & Anr. ... Appellants

Versus

Surat Ram & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellants : Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondents: Mr. Bhupinder Gupta, Senior Advocate with Mr. Janesh Gupta, Advocate.

V.K. Ahuja, J.:

This is an appeal filed by the appellants against the judgment and decree of the Court of learned Additional District Judge, dated 10.8.1994, vide which the appeal filed by the respondent as against the judgment and decree of the Court of learned Sub Judge, Chopal dated 18.4.1991 for recovery of Rs.25,474/- was allowed and the suit of the respondents/plaintiffs for recovery of this amount was decreed as against the appellants.

Briefly stated the facts of the case are that the respondents/plaintiffs filed a suit for recovery of Rs.25,474/-. It was

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[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

alleged by the plaintiffs that they were owner of one bigha of land comprised in Khasra No. 588 which land their predecessor-in-interest had got by way of Nautor on 16.1.1974. It was further alleged that in 1978 the officials of the PWD constructed a road known as Chopal-Dadahu road and in May, 1978, the road was taken out from the portion just above the land of the plaintiffs. At the time of construction of the said road, the boulders fell on the property of the plaintiffs and damage was caused to his house and twenty apple plants, one almond, one plum and one pear plant which were completely damaged. The damage was duly assessed by the Patwari Halqua, then by the Field Kanungo and it was further verified further by the Tehsildar. The spot was also inspected by the Junior Engineer and a reference was made to the Horticulture Department to assess the damage who assessed the damage to the plants at Rs.20,474/- and damage to the house was allegedly to the extent of Rs.5,000/-. Hence, this suit was filed by the plaintiffs for the recovery of Rs.25,474/-.

The defendants admitted that the land belongs to the plaintiffs. They also admitted that the road was constructed above the land of the plaintiffs but they denied that any damage was caused to the house or plants of the plaintiffs. It was pleaded that the land is entered as 'Bakhal Awal' in the revenue record which shows that it is under cultivation and since no damage was done, the defendants are not entitled to any amount.

The suit was tried by the learned trial Court who accepted the plea of the plaintiffs that they were owner of the land over which the road was constructed above their land. It was also held that the damage was caused but in regard to the extent of

damage the evidence was not relied upon and the suit was dismissed. On appeal, the learned first Appellate Court set aside the findings of the learned trial Court holding that the plaintiffs were entitled to a sum of Rs.20,474/- assessed as damage to the plaintiffs by the Horticulture Department. However, in regard to damage to the house, the findings of the learned trial Court were affirmed that it was not proved.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellants and Mr. Bhupinder Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate, for the respondents and have also gone through the record.

The submissions made by the learned Additional Advocate General were that in case there is misreading of evidence by the learned first Appellate Court, in second appeal, this Court can re-appraise the evidence and it is a substantial question of law in case there has been misreading of the evidence by the Court. To substantiate his point, he relied upon the decisions in the following cases:-

The decision of Full Bench of Hon'ble Calcutta High Court in **Ratanlal Bansilal and others** Vs. **Kishorilal Goenka and others**, **AIR 1993 Calcutta 144**, shows that it was observed that erroneous application of law raises substantial question of law. Where the findings of fact is on no evidence, it is then to be either on assumptions, or on surmises and conjectures. It was held that such a situation cannot be allowed to go unremedied where it leads to the denial of justice. The decision in **Hero Vinoth (Minor)** Vs. **Seshammal**, **(2006) 5 Supreme Court Cases 545**, shows that it was observed that substantial

question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance, but may only be one which was involved in the case. It was observed that it will depend on facts and circumstances of each case whether a question of law is a substantial one and involved in the case or not. The paramount overall consideration being to strike a judicious balance between the indispensable obligation to do justice and the impelling necessity of avoiding prolongation in life of any lis. The decision in **Dev Kumar (Died) through LRs.** Vs. **Swaran Lata (SMT) and others**, **(1996) 1 Supreme Court Cases 25**, shows that in absence of perversity, findings of the appellate authority on that question not open to interference by High Court under the Rent Act.

On the other hand, the learned counsel for the respondents submitted that there was no perversity in the judgment and there was no misreading of evidence to call for re-appraisal of the evidence by this Court. In support of his submission he relied upon the decision in **Kondiba Dagadu Kadam** Vs. **Savitribai Sopan Gujar and others**, **(1999) 3 Supreme Court Cases 722**, in which it was held that on facts, no question of law was involved and High Court wrongly disturbed the findings of facts of the first appellate Court without adhering to the principles and limitation imposed by Section 100 CPC. It was also observed that the High Court can not substitute its own opinion for that of the first appellate Court unless it finds that the conclusions drawn by the lower Court were erroneous being (1) contrary to the mandatory provisions of applicable law; or (2) contrary to the law as

pronounced by the Apex Court; or (3) based upon inadmissible evidence or no evidence.

Coming to the facts of the case, the learned trial Court as well as the learned first Appellate Court have given concurrent findings that the land was owned by the plaintiffs, the construction of the road was made above that land and there was findings of both the Courts below that the damage was caused to the plants of the plaintiffs. The only dispute was that the learned trial Court has observed that the evidence of the plaintiffs suggests that the age of the plants was about 3 years, while the report of the expert shows that he had assessed the loss taking in view of the age of the apple plants as 9/10 years. The learned trial Court declined to grant any damages to the plaintiffs, while the learned first Appellate Court considered the contradictions in the statements of the plaintiffs and other witnesses and expert witness and also referred to Harbans Singh Formula which is applied in this area for assessing the value of the plants. The findings recorded by the learned first Appellate Court cannot be said to be perverse and there is nothing to show that there was misreading of evidence and rather the Court had considered the evidence in its right perspective and had granted the relief of damages as per the report of the expert. The said evidence does not need re-appraisal from this Court and as such, those findings are liable to be affirmed. Insofar as the substantial questions of law framed at the time of admission of the appeal are concerned, the suit was filed within time as per the statement made by the learned Advocate General in the civil writ. Insofar as the question is concerned that the learned first Appellate Court had arrived at a wrong conclusion by ignoring the evidence of the

appellants, there is nothing on record to show that the said conclusion was wrongly arrived at by the learned first Appellate Court ignoring the evidence of the appellants. From whichever angle the findings of the learned first Appellate Court are considered, they are sustainable in the eyes of law and there is no merit in this appeal filed by the appellants. The appeal is liable to be dismissed which is dismissed accordingly.

The record of the case shows that the amount had already been released in favour of the respondents on furnishing security bonds along with interest and those security bond shall stand discharged. The appeal has been unnecessarily contested for number of years and, therefore, the appeal is being dismissed along with costs including lawyer's fee assessed at Rs.2000/-, which shall be payable to the respondents within a period of three months from today, failing which, they shall be entitled to interest at the rate of 9% per annum thereafter.

Copy of the judgment be sent to both the Courts below along with the record.

(V.K. Ahuja),
Judge

March 21 , 2007
(BSS)